

## REMARKS

### Status of the Claims

No claims are currently amended.

Claims 2 and 5-15 are cancelled without prejudice.

Claims 1, 3-4 and 16-22 are pending.

### Claim Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 16-18 are rejected in the Office Action of June 6, 2009 under 35 U.S.C. § 112, first paragraph, as lacking sufficient enablement in the specification. The Examiner notes that Applicant has deposited the organisms recited in claims 16-18, but the Examiner states that there is no indication in the specification as to public availability.

In response, the *Declaration of the Assignee's representative* in this application, is submitted herewith to establish that the deposit requirement has been satisfied in this case. As stated in the *Declaration*, the microorganisms, including those recited in claims 16-18, were deposited under the terms of the Budapest Treaty, and each said strain will be irrevocably and without restriction or condition released to the public upon the issuance of the a U.S. patent in the above-identified matter. Claims 16-18 are believed to be in full compliance with the requirements of 35 U.S.C. § 112, first paragraph.

### Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

In the Office Action, claims 1, 3-4 and 16-22 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. It is said in the Office Action that these claims recite an improper Markush group because "Streptomyces genera are not bacteria but yeasts." Applicants respectfully traverse this rejection and submit that it is a well-known fact that *Streptomyces* refers to "the type genus of Streptomycetaceae comprising numerous bacteria that produce chains of conidia from aerial hyphae and including some that form antibiotics as by-products of their metabolism." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED, Philip Babcock Gove, Ed., Merriam-Webster Inc., Springfield, Massachusetts, U.S.A. (2002), p. 2260. Accordingly, claims 1 and 22, and claims 3-4 and 16-21 which depend directly or indirectly

from either claim 1 or 22, are believed to be in full compliance with the requirements of 35 U.S.C. § 112, second paragraph.

**Conclusion**

Applicant respectfully requests reconsideration and withdrawal of the rejections, and allowance of all pending claims. A Petition for one-month extension of time and the associated fee accompanies this paper. If any necessary fee has been inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C., Houston, Texas, Deposit Account No. 03-2769, and consider this a petition for any necessary extension of time.

Respectfully submitted,

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